INDEX

TO

THE PRINCIPAL MATTERS

IN THIS VOLUME.

A.

ADMIRALTY.

1. A decree of acquittal, on a proceeding *in rem*, without a certificate of probable cause of seizure, and not appealed from with effect, is conclusive, in every inquiry before any other Court, that there was no justifiable cause of seizure. *The Appollon*, 362. 367
2. The French Tonnage Duty Act of the 15th of May, 1820, c. 125. inflicts no forfeiture of the vessel for the non-payment of the tonnage duty. The duty is collectable in the same manner as by the Collection Act of 1799, c. 128. *Id.* 367
3. The 29th section of the Collection Act of 1799, c. 128. does not extend to the case of a vessel arriving from a foreign port, and passing through the conterminous waters of a river, which forms the boundary between the United States and the territory of a foreign state, for the purpose of proceeding to such territory. *Id.* 369
4. The municipal laws of one nation do not extend, in their operation, beyond its own territory, except as regards its own citizens. *Id.* 370
5. A seizure for the breach of the municipal laws of one nation, cannot be made within the territory of another. *Id.* 371
6. *It seems*, that the right of visitation and search for enforcing the revenue laws of a nation, may be exercised beyond the territorial jurisdiction upon the high seas, and on vessels belonging to such nation, or bound to its ports. *Id.* 371
7. A municipal seizure cannot be justified or excused, upon the ground of probable cause, unless under the special provisions of some statute. *Id.* 372
8. The probable profits of a voyage, either upon the cargo or freight, do not form an item for the computation of damages, in cases of marine torts. *Id.* 376
9. Where the property is restored, after a detention, demurrage is allowed for the detention of the ship, and interest upon the value of the cargo. *Id.* 377
10. Where the vessel and cargo have been sold, the gross amount of the

sales, with interest, is allowed; and an addition of 10 per cent. sometimes made, where the property has been sold under disadvantageous circumstances. *Id.* 377

11. Counsel fees may be allowed, either as damages or costs, both on the Instance and Prize side of the Court. *Id.* 379

12. A libel of information does not require all the technical precision of an indictment at common law. If the allegations describe the offence, it is all that is necessary; and if founded upon a statute, it is sufficient if it pursues the words of the law. *The Emily and the Caroline,* 331

13. An information, under the Slave Trade Act of 1794, c. 187. [xi.] s. 1. which describes, in one count, the two distinct acts of *preparing a vessel* and of *causing her to sail,* pursuing the words of the law, is sufficient. *Id.* 387

14. Stating a charge *in the alternative,* is good, if each alternative constitutes an offence for which the thing is forfeited. *Id.* 387

15. Under the above act, it is not necessary, in order to incur the forfeiture, that the vessel should be completely fitted and ready for sea. As soon as the preparations have proceeded so far as clearly to manifest the intention, the right of seizure attaches. *Id.* 388

16. The former decision of this Court, in the case of the *Emily and the Caroline,* (7 *Cranch,* 496.) reconciled with its determination in the present case. *Id.* 387

17. The technical niceties of the common law are not regarded in Admiralty proceedings. It is sufficient, if an information set forth the offence so as clearly to bring it within the statute upon which the information is founded. It is not necessary that it should conclude *contra formam statuti. The Merino et al.* 391. 401

19. The District Court of the district where the seizure was made, and not where the offence was committed, has jurisdiction of proceedings *in rem,* for an alleged forfeiture. *Id.* 402

19. If the seizure is made on the high seas, or within the territory of a foreign power, the jurisdiction is conferred on the Court of the district where the property is carried and proceeded against. *Id.* 402

20. A municipal seizure, within the territory of a foreign power, does not oust the jurisdiction of the District Court into whose district the property may be carried for adjudication. *Id.* 402, 403

21. The prohibitions in the Slave Trade Acts of the 10th of May, 1800, c. 205. [li.] and of the 20th of April, 1818, extend as well to the carrying of slaves on freight, as to cases where the persons transported are the property of citizens of the United States; and to the carrying them from one port to another of the same foreign empire, as well as from one foreign country to another. *Id.* 403, 404

22. Under the 4th section of the act of the 10th of May, 1800, c. 205. [li.] the owner of the slaves transported contrary to the provisions of that act, cannot claim the same in a Court of the United States, although they may be held in servitude according to the laws of his own country. But if, at the time of the capture by a commissioned vessel, the offending ship was in possession of a non-commissioned captor, who had made a seizure for the same offence, the owner of the slaves may claim; the section only applying to per-

sons interested in the enterprise or voyage in which the ship was employed *at the time of such capture*. *Id.* 407

23. A question of fact, under the Slave Trade Acts. Condemnation pronounced. *Id.* 409
24. The claim of seamen, for wages, on a voyage undertaken in violation of the Slave Trade Acts, out of the proceeds of the forfeited vessel in the registry, rejected. *Id.* 414, 415
25. The claims of seamen, for wages, and of material men, for supplies, where the parties were innocent of all knowledge of, or participation in, the illegal voyage, preferred to the claim of forfeiture on the part of the government. *Id.* 416
26. Material men have a lien, which may be enforced by a proceeding in the Admiralty, *in rem*, for necessaries or supplies, furnished in a port to which the vessel does not belong. *Id.* 417
27. A transfer of a registered vessel of the United States, to a foreign subject, in a foreign port, for the purpose of evading the revenue laws of the foreign country, with an understanding that it is to be afterwards reconveyed to the former owner, works a forfeiture of the vessel, under the 16th section of the Ship Registry Act of the 31st of December, 1792, c. 1. unless the transfer is made known in the manner prescribed by the 7th section of the act. *The Margaret*, 421
28. The statute does not require a beneficial or *bona fide* sale; but a transmutation of ownership, "by way of trust, confidence, or otherwise," is sufficient. *Id.* 424
29. *Quære*, Whether, in such a case, a reconveyance would be decreed by a Court of justice in this country? *Id.* 424
30. The proviso in the 16th section of the Ship Registry Act, being by way of exception from the enacting clause, need not be taken notice of in a libel brought to enforce the forfeiture. It is matter of defence to be set up by the party in his claim. *Id.* 425, 426
31. The proviso applies only to the case of a *part owner*, and not to a *sole owner* of the ship. *Id.* 426
32. The trial, in such a case, is to be by the Court, and not by a jury, in seizures on waters navigable from the sea by vessels of ten tons burthen and upwards. *Id.* 427, 428
33. A registered vessel, which continues to use its register, after a transfer under the above circumstances, is liable to forfeiture under the 27th section of the act, as using a register without being actually entitled to the benefit thereof. *Id.* 429
34. In a libel of information, under the 67th section of the Collection Act of 1799, c. 128. against goods, on account of their differing in description from the contents of the entry, it is not necessary that it should allege an intention to defraud the revenue. 200 *Chests of Tea*, 430. 436
35. A question of fact, as to the rate of duties payable upon certain teas, imported as *bohea*. That term is used in the duty act in its known commercial sense; and the bohea tea of commerce is not usually a distinct and simple substance, but is a compound, made up in China, of various kinds of the lowest priced *black* teas. *Id.* 436
36. But, by the duty acts, it is liable

to the same specific duty, without regard to the difference of quality and price. *Id.* 436

37. In judicial sales, there is no warranty, express or implied. *The Monte Allegre*, 616. 644

38. Upon a sale by the Marshal, under an order of Court, no warranty is implied. *Id.* 645

39. Neither the Marshal, nor his agent, the auctioneer, has any authority to warrant the article sold. *Id.* 645

40. *Quære*, How far the Marshal is responsible to the vendee, in his private capacity, if he undertake to warrant, or to do what would imply a warranty in a private sale? *Id.* 645

41. Upon an Admiralty proceeding, *in rem*, where the proceeds of the sale are brought into Court, they are not liable to make good a loss sustained by the purchaser, in consequence of a defect being discovered in the article sold. *Id.* 648, 649

ALIEN.

1. Under the 9th article of the treaty between the United States and Great Britain, of 1794, it is not necessary for the alien to show that he was in the actual possession or seisin of the land, at the date of the treaty, which applies to the title, whatever that may be, and gives it the same legal validity as if the parties were citizens. The title of an alien mortgagee is protected by the treaty. *Hughes* v. *Edwards*, 489. 496

2. But, independent of the stipulations of the treaty, an alien mortgagee has a right to come into a Court of equity, and have the property, which has been pledged for the payment of the debt, sold for the purpose of raising the money. His demand is merely a personal one, the debt being considered as the principal, and the land as an incident. *Id.* 497

B.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. In a declaration upon a promissory note, the omission of the place where it is payable is fatal. *Sebree* v. *Dorr*, 558. 561, 562

2. By the custom of the Banks in the District of Columbia, payment of a promissory note is to be demanded on the *fourth* day after the time limited for the payment thereof, in order to charge the endorser, contrary to the general law merchant, which requires a demand on the *third* day. *Renner* v. *Bank of Columbia*, 581—584

3. Evidence of such a local custom is admissible, in order to ascertain the understanding of the parties, with respect to their contracts made with reference to it. *Id.* 587

4. Cases in which evidence of commercial usage is admissible, in order to ascertain the meaning of contracts. *Id.* 588

5. The declaration against the endorser, in such a case, must lay the demand on the *fourth*, and not on the *third* day. *Id.* 594

6. *Quære*, Whether a declaration, in such a case, not averring the local usage, would be good upon demurrer? *Id.* 594

7. Secondary evidence of the contents of a lost note is admissible, wherever it appears that the original is destroyed, or *lost* by accident, without any fault of the party. *Id.* 596

8. In the case of a lost note, it is not necessary that its contents should be proved by a *notarial* copy. All that is required is, that it should be the best evidence the party has it in his power to produce. *Id.* 597
9. To admit secondary evidence of a lost note, it is not necessary that there should be a special count in the declaration upon a lost note. *Id.* 597
10. Where the maker of the note has removed into another State, or another jurisdiction, subsequent to the making of the note, a personal demand upon him is not necessary to charge the endorser, but it is sufficient to present the note at the former place of residence of the maker. *M'Gruder* v. *Bank of Washington*, 598

C.

CHANCERY.

1. A bill in equity, brought to rescind a purchase made under the decree of this Court, in *Terrett* v. *Taylor*, (9 *Cranch*, 43.) upon the ground, that the title to the property was defective, and could not be made good by the Vestry and other persons, who were parties to the former suit. Bill dismissed. *Mason* v. *Muncaster*, 445
2. Where the mortgage deed contained a defeasance that the mortgagor should pay the debt, according to the condition of a bond recited in the deed, by which it was payable on a day already past, at the time of the execution of the deed: *Held*, that this circumstance did not avoid the mortgage deed in equity, where it was to be considered as a conveyance, absolute at law, but intended as a security merely, and to be treated in the same manner as an ordinary mortgage. *Hughes* v. *Edwards*, 489—493
3. A Court of equity looks to the substantial object of the conveyance, and will consider an absolute deed as a mortgage, wherever it is shown to have been intended merely as a security for the payment of a debt. *Id.* 495
4. In the case either of a legal or equitable mortgage, the mortgagee may pursue his legal remedy by ejectment, and, at the same time, file his bill to foreclose the equity of redemption. *Id.* 494
5. A mortgagor cannot redeem after a lapse of twenty years, after forfeiture and possession by the mortgagee, (which period has been adopted in equity by analogy to the statute of limitations,) no interest having been paid in the mean time, and no circumstances appearing to account for the neglect. *Id.* 497
6. Where the mortgagee brings his bill of foreclosure, the mortgage will, after the same length of time, be presumed to have been discharged, unless circumstances can be shown to repel the presumption, as, payment of interest, a promise to pay, an acknowledgment by the mortgagor that the mortgage is still subsisting, and the like. *Id.* 497, 498
7. A *bonæ fidei* purchaser under the mortgagor, with actual notice of the mortgage, or constructive notice by means of a registry, can only protect himself, by the lapse of time, or other equity, under the same circumstances which would afford a protection to the mortgagor. *Id.* 499
8. Such a purchaser is not entitled to have the value of the improvements made by him deducted

from the proceeds of the sale of the mortgaged premises. *Id.* 500

9. Practice of Courts of Equity on judicial sales. *The Monte Allegre*, 616. 649
10. In all cases of concurrent jurisdiction, the Court which first has possession of the subject, must determine it conclusively. *Smith v. M'Iver*, 532
11. Although Courts of equity have concurrent jurisdiction with Courts of law, in all matters of fraud, yet, where the cause has already been tried and determined by a Court of law, a Court of equity cannot take cognizance of it, unless there be the addition of some equitable circumstance to give jurisdiction. *Id.* 534
12. In such a case, some defect of testimony, or other disability, which a Court of law cannot remove, must be shown, as a ground for resorting to a Court of equity. *Id.* 534
13. In general, the answer of one defendant in equity, cannot be read in evidence against another. But where one defendant succeeds to another, so that the right of the one devolves on the other, and they become privies in estate, the rule does not apply. *Osborn v. Bank of the United States*, 738
14. Where the defendant is restrained by an injunction, from using money in his possession, interest will not be decreed against him. *Id.* 837
15. An injunction will be granted to prevent the franchise of a corporation from being destroyed, as well as to restrain a party from violating it, by attempting to participate in its exclusive privileges. *Id.* 838
16. In general, an injunction will not be allowed, nor a decree rendered, against an agent, where the principal is not made a party to the suit. But if the principal be not himself subject to the jurisdiction of the Court, (as in the case of a sovereign State,) the rule may be dispensed with. *Id.* 842
17. A Court of equity will interpose by injunction, to prevent the transfer of a specific thing, which, if transferred, will be irretrievably lost to the owner, such as negotiable securities and stocks. *Id.* 845

CONSTITUTIONAL LAW.

1. The acts of the Legislature of the State of New-York, granting to Robert R. Livingston and Robert Fulton, the exclusive navigation of all the waters within the jurisdiction of that State, with boats moved by fire or steam, for a term of years, are repugnant to that clause of the constitution of the United States, which authorizes Congress to regulate commerce, so far as the said acts prohibit vessels licensed, according to the laws of the United States, for carrying on the coasting trade, from navigating the said waters by means of fire or steam. *Gibbons v. Ogden*, 1. 186.
2. The power of regulating *commerce*, extends to the regulation of *navigation*. *Id.* 189
3. The power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations, and among the several States. It does not stop at the external boundary of a State. *Id.* 193
4. The power to regulate commerce is general, and has no limitations, but such as are prescribed in the constitution itself. *Id.* 196
5. The power to regulate commerce, so far as it extends, is exclusively

vested in Congress, and no part of it can be exercised by a State. *Id.* 198

6. State inspection laws, health laws, and laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, &c. are not within the power granted to Congress. *Id.* 203

7. The laws of New-York, granting to R. R. L. and R. F. the exclusive right of navigating the waters of that State with steam boats, are in collision with the acts of Congress regulating the coasting trade, which being made in pursuance of the constitution, are supreme, and the State laws must yield to that supremacy, even though enacted in pursuance of powers acknowledged to remain in the States. *Id.* 210

8. A license under the acts of Congress, for regulating the coasting trade, gives a permission to carry on that trade, and is not merely intended to confer the national character. *Id.* 212. 214

9. The power of regulating commerce extends to navigation carried on by vessels exclusively employed in transporting passengers. *Id.* 215, 216

10. The power of regulating commerce, extends to vessels propelled by steam or fire, as well as to those navigated by the instrumentality of wind and sails. *Id.* 219

11. The act of incorporation of the Bank of the United States, which gives the Circuit Courts of the United States jurisdiction of suits by and against the Bank, is warranted by the 3d article of the constitution, which declares, that "the judicial power shall extend to *all cases*, in law and equity, arising under this constitution, *the laws of the United States*, and treaties made, or which shall be made, under their authority." *Osborn v. U. S. Bank*, 738

12. The Circuit Courts of the United States have jurisdiction of a bill brought by the Bank of the United States, for the purpose of protecting the Bank in the exercise of its franchises, which are threatened to be invaded, under the unconstitutional laws of a State; and, as the State itself cannot, according to the 11th amendment of the constitution, be made a party defendant to the suit, it may be maintained against the officers and agents of the State, who are intrusted with the execution of such laws. *Id.*

13. A State cannot tax the Bank of the United States; and any attempt, on the part of its agents and officers, to enforce the collection of such tax against the property of the Bank, may be restrained by injunction from the Circuit Court. *Id.*

CONSTRUCTION OF STATUTE.

1. The French Tonnage Duty Act of the 15th of May, 1820, c. 125. inflicts no forfeiture of the vessel, for non-payment of the tonnage duty. The duty is collectable in the same manner as by the Collection Act of 1799, c. 128. *The Appollon*, 362. 367

2. The 29th sec. of the Collection Act of 1799, c. 128. does not extend to the case of a vessel arriving from a foreign port, and passing through the conterminous waters of a river, which forms the boundary between the United States and the territory of a foreign State for the purpose of proceeding to such territory. *Id.* 369

3. Under the Slave Trade Act of 1794, c. 187. [xi.] s. 1. an in-

formation, which describes, in one count, the two distinct acts of *preparing a vessel* and of *causing her to sail*, pursuing the words of the law, is sufficient. *The Emily and the Caroline*, 379. 381

4. Under the above act, it is not necessary, in order to incur the forfeiture, that the vessel should be completely fitted and ready for sea. As soon as the preparations have proceeded so far, as clearly to manifest the intention, the right of seizure attaches. *Id.* 388
5. The prohibitions in the Slave Trade Acts of the 10th of May, 1800, c. 205. [li.] and of the 20th of April, 1818, extend as well to the carrying of slaves on freight, as to cases where the persons transported are the property of citizens of the United States; and to the carrying of them from one port to another, of the same foreign empire, as well as from one foreign country to another. *The Merino and others*, 391. 403
6. Under the 4th sec. of the act of the 10th of May, 1800, c. 205. [li.] the owner of the slaves transported contrary to the provisions of that act, cannot claim the same in a Court of the United States, although they may be held in servitude, according to the laws of his own country. But if, at the time of capture by a commissioned vessel, the offending ship was in possession of a non-commissioned captor, who had made a seizure for the same offence, the owner of the slaves may claim: the section only applying to persons interested in the enterprise or voyage in which the ship was employed *at the time of such capture*. *Id.* 407
7. Under the 16th sec. of the Ship Registry Act of the 31st of December, 1792, c. 1. a transfer of a registered vessel of the United States, to a foreign subject, in a foreign port, for the purpose of evading the revenue laws of the foreign country, with an understanding that it is to be afterwards reconveyed to the former owner, works a forfeiture, unless the transfer is made known in the manner prescribed by the 7th sec. of the act. *The Margaret*, 421
8. The statute does not require a beneficial or *bona fide* sale; but a transmutation of ownership, "by way of trust, confidence, or otherwise," is sufficient. *Id.* 424.
9. In a libel of information under the 67th sec. of the Collection Act of 1799, c. 128. against goods, on account of their differing from the contents of the entry, it is not necessary that it it should allege an intention of defrauding the revenue. 200 *Chests of Tea*, 430. 436
10. The term "*bohea* tea," is used in the duty act in its known commercial sense; and the *bohea* of commerce is not usually a distinct and simple substance, but is a compound, made up in China, of various kinds of the lowest priced *black* teas. But, by the Duty Acts, it is liable to the same specific duty, without regard to the difference of quality and price. *Id* 436
11. Under the 2d and 4th sections of the act of the 3d of March, 1797, c. 368. a certified transcript from the books of the Treasury is evidence against the defendant; and no claim for any credit can be admitted at the trial, which has not been presented to, and disallowed by the accounting officer of the Treasury, (unless in the cases excepted by the act,) although no proceedings have been had against the debtor, under the act of the

3d of March, 1795, c. 289. by notification from the Treasury Department, requiring him to render to the Auditor of the Treasury his accounts and vouchers for settlement. *Walton v. United States*, 651

12. *Quære*, Whether the act of the 3d of March, 1795, c. 289. is not virtually repealed by the act of the 3d of March, 1797, c. 368?

13. The statute of 11 and 12 Wm. III. c. 6. which is in force in Maryland, removes the common law disability of claiming title through an *alien ancestor*, but does not apply to a *living alien ancestor*, so as to create a title by heirship, where none would exist by the common law, if the ancestor were a natural born subject or citizen. *M'Creery v. Somerville*, 354

14. Thus, where A. died seised of lands in Maryland, leaving no heirs, except B., a brother, who was an alien, and had never been naturalized as a citizen of the United States, and three nieces, the daughters of the said B., who were native citizens of the United States: it was *held*, that they could not claim title by inheritance, through B., their father, he being an alien, and still living. *Id.* 354

See LOCAL LAW.

CONTRACT.

See ADMIRALTY, 24, 25, 26, 27, 28, 29, 30, 31. 37, 38, 39.
BILLS OF EXCHANGE AND PROMISSORY NOTES.
CHANCERY.
EVIDENCE.

D.

DEED.

1. Although the *Church-Wardens* of a parish are not capable of holding *lands*, and a deed to them and their successors in office, for ever, cannot operate by way of *grant*; yet, where it contains a covenant of general warranty, binding the grantors and their heirs for ever, it may operate *by way of estoppel*, to confirm to the church and its privies the perpetual and beneficial estate in the land. *Mason v. Muncaster*, 445. 455

DEVISE.

1. R. B. being seised of lands in Maryland, made three instruments of writing, each purporting to be his will. The first, dated in 1789, gave his whole estate to his nephew, J. T. M., after certain pecuniary legacies to his other nephews and nieces. In the second will, dated in 1800, the testator gave his whole real estate to J. T. M., during his life; and after his death, to his eldest son, A., in tail, on condition of his changing his name to *A. Barnes*, with remainder to the heirs of his nephew, J. T. M., lawfully begotten, for ever, on their changing their surnames to Barnes. The third will, which was executed after the others, and probably in 1803, after some small bequests, proceeded thus: "I give the whole of my property, after complying with that I have mentioned, to the male heirs of my nephew, J. T. M., *lawfully begotten, for ever*, agreeably to the law of England, which

was the law of our State before the revolution, that is, the oldest male heir to take all, on the following terms: that the *name of the one that may have the right*, at the age of twenty-one, with his consent, be changed to A. Barnes, by an act of public authority of the State, without any name added, together with his taking an oath, before he has possession, before a magistrate of St. Mary's county, and have it recorded in the office of the Clerk of the county, that he will not make any change, during his life, in this my will, relative to my real property. And on his refusing to comply with the above mentioned terms, to the next male heir, on the above mentioned terms; and so on, to all the male heirs of my nephew, J. T. M., as may be, on the same terms; and all of them refusing to comply, in a reasonable time after they have arrived at the age of twenty-one, say, not exceeding twelve months, *if in that time it can be done*, so that no act of intention to defeat my will shall be allowed of; and on their refusing to comply with the terms above mentioned, if any such person may be, then to the son of my late nephew, J. T. M., named A. T. M., on the above mentioned terms; and on his refusal, to his brother, J. T. M.; and on his refusing to comply with the above mentioned terms, to the heirs male of my nephew, A. B. T. M., lawfully begotten, on the above mentioned terms; and on their refusal, to the male heirs of my niece, Mrs. C., lawfully begotten, on their complying with the above mentioned terms; and on their refusal, to the daughter of my nephew, J. T. M., named Mary, so on to any daughter he may have or has." The testator then appoints J. T. M. his sole executor, with a salary of 1600 dollars per annum, for his life, and adds, "and my will is, that he shall keep the whole of my property in his possession, during his life." He then empowers his executor to manage the estate at his discretion, to employ agents, and to pay them such salaries as he shall think proper; to repair the houses, and build others, as he may think necessary; to reside at his plantations, and to use their produce for his support; and adds, "after which to be the property of the person that may have a right to it, as above mentioned." *Held*, that the conditions annexed to the estate, devised to the oldest male heir of J. T. M., were *subsequent* and not *precedent*, and that, consequently, the contingency on which the devise was to take effect, was not too remote, the estate vesting on the death of J. T. M.; to be devested, on the non-performance of the condition. *Taylor v. Mason*, 325

2. *Quœre*, Whether J. T. M. took an estate tail? *Id.* 353

3. *Quœre*, Whether the last will revoked those which preceded it? *Id.* 353

DUTIES.

See ADMIRALTY, 2, 3. 34, 35, 36.

E.

EVIDENCE.

1. Secondary evidence of the contents of written instruments is not admissible, where the originals are within the control or custody of the party. *Sebree v. Dorr*, 558. 563

2. Secondary evidence of the contents of written instruments is admissible, wherever it appears that the original is destroyed, or *lost*, by accident, without any fault of the party. *Renner v. Bank of Columbia*, 581. 596
3. In the case of a lost note, it is not necessary that its contents should be proved by a *notarial* copy. All that is required is, that it should be the best evidence the party has it in his power to produce. *Id.* 597
4. The English practice of requiring a special count in the declaration, as upon a lost note, in order to let in secondary evidence of its contents, has not been adopted in the United States. *Id.* 597
5. If a party intend to use a written instrument in evidence, he must produce the original, if in his possession. But if it is in the possession of the other party, who refuses to produce it, after notice, or if the original is lost or destroyed, secondary evidence (being the best which the nature of the case allows) will be admitted. *Riggs v. Tayloe*, 483
6. The party, in such case, may read a counterpart; or, if there is no counterpart, an examined copy; or, if no such copy, may give parol evidence of the contents. *Id.* 486
7. Where a writing has been voluntarily destroyed, for fraudulent purposes, or to create an excuse for its non-production, secondary evidence of its contents is not admissible. But where the destruction or loss (although voluntary) happens through mistake or accident, such evidence will be admitted. *Id.* 486
8. In an action against the receiver, not describing him in his official capacity, evidence may be given of moneys received in his official capacity; and, under a count for money had and received, evidence may be given of public stock received by him, where such stock is, by law, made receivable, at par, in payment for lands sold by the United States. *Walton v. United States*, 651

EXTINGUISHMENT.

1. A covenant, under seal, to come to a settlement within a limited time, and to pay the balance which might be found due, is merely collateral, and cannot be pleaded as an extinguishment of a simple contract debt, the period within which the settlement was to be made, having elapsed before the commencement of the suit, and the plea not averring that any such settlement had been made. *Baits v. Peters*, 556
2. The official bond given by a receiver of public moneys, does not extinguish the simple contract debt arising from a balance of account due from him to the United States. An action of assumpsit for the balance of account, and an action of debt upon the bond against the principal and sureties, may be maintained at the same time. *Walton v. United States*, 651

J.

JURISDICTION.

1. The District Court of the district where the seizure was made, and not where the offence was committed, has jurisdiction of proceedings *in rem*, for an alleged forfeiture. *The Merino et al.* 391. 402

2. If the seizure is made on the high seas, or within the territory of a foreign power, the jurisdiction is conferred on the Court of the district where the property is carried and proceeded against. *Id.* 402

3. A municipal seizure, within the territory of a foreign power, does not oust the jurisdiction of the District Court, into whose district the property is brought for adjudication. *Id.* 402, 403

4. Where Courts of equity have concurrent jurisdiction with Courts of law, as in matters of fraud, if the cause has already been tried and determined by a Court of law, a Court of equity cannot take cognizance of it, unless there be the addition of some equitable circumstance to give jurisdiction. The Court, which first has possession of the subject, must determine it conclusively. *Smith v. M'Iver*, 532. 534

5. In such a case, some defect of testimony, or other disability, which a Court of law cannot remove, must be shown, as a ground for resorting to a Court of equity. *Id.* 534

6. An endorsee of a promissory note, who resides in a different State, may sue, in the Circuit Court, his immediate endorser, residing in the State in which the suit is brought, although that endorser be a resident of the same State with the maker of the note. *Mollan v. Torrance*, 537

7. But where the suit is brought against a remote endorser, and the plaintiff, in his declaration, traces his title through an intermediate endorser, he must show that this intermediate endorser could have sustained his action in the Circuit Court. *Id.* 537

8. A plea to the jurisdiction of the Circuit Court, must show that the parties were citizens of the same State, at the time the action was brought, and not merely at the time of the plea pleaded. The jurisdiction depends upon the state of things at the time of the action brought; and after it is once vested, it cannot be ousted by a subsequent change of residence of either of the parties. *Id.* 539

9. *Quære*, As to the authority of this Court to interfere, by mandamus, in the case of the removal or suspension of an Attorney of the District and Circuit Courts. *Ex parte Burr*, 529

10. Whatever may be the authority of this Court in that respect, it will not be exercised, unless where the conduct of the Court below has been grossly irregular and unjust. *Id.* 530

11. In a regular complaint against an attorney, charges cannot be received and acted on, unless made on oath. But he may himself waive the preliminary of an affidavit, and the Court may proceed, at his instance, to investigate the charges upon testimony, which must be on oath, and regularly taken. *Id.* 530

12. In replevin, if it be of goods distrained for rent, the amount for which avowry is made, is the value of the matter in controversy; and if the writ be issued to try the title to property, it is in the nature of detinue, and the value of the article replevied is the value of the matter in controversy, so as to give jurisdiction to this Court upon a writ of error. *Peyton v. Robertson*, 527

13. The act incorporating the Bank of the United States, gives the Circuit Courts of the United States jurisdiction of suits by and against the Bank, and this provision is warranted by the constitution.

Osborn v. Bank of the United States, 738

14. The Circuit Courts of the United States have jurisdiction of a bill brought by the Bank of the United States, for the purpose of protecting the Bank in the exercise of its franchise, which are threatened to be invaded under the unconstitutional laws of a State, and the suit may be maintained against the officers and agents of the State, who are entrusted with the execution of such laws. *Id.*

L.

LEX LOCI.

1. The disposition of real property, by deed or will, is subject to the laws of the country where it is situated. *Kerr v. Moon*, 565
2. Where the devisor was entitled to warrants for land in the Virginia Military District in the State of Ohio, under the laws and ordinances of Virginia, on account of his military services, and made a will in Kentucky, devising the lands, which was duly proved and registered, according to the laws of the State: *Held*, that although the title to the land was merely equitable, and that not to any specific tract of land, it could not pass, unless by a will proved and registered according to the laws of Ohio. *Id.* 565
3. Even admitting it to have been personal property, a person claiming under a will proved in one State, cannot intermeddle with, or sue for, the effects of a testator in another State, unless the will be proved in the latter State, or it is permitted by some law of that State. *Id.* 571
4. Letters testamentary give to an executor no authority to sue for the personal estate of his testator, out of the jurisdiction of the State by which they were granted. *Id.* 571
5. Under the statute of Ohio, which permits wills made in other States, concerning property in that State, to be proved and recorded in the Court of the county where the property lies, it must appear that the requisitions of the statute have been pursued, in order to give the will the same validity and effect as if made within the State. *Id.* 572

LIMITATION.

1. Where a mortgagor comes to redeem, the Court of equity has, by analogy to the statute of limitations, fixed upon 20 years as the period, after forfeiture, and possession taken by the mortgagee, no interest having been paid in the mean time, and no circumstances appearing to account for the neglect, beyond which a right of redemption shall not be favoured. *Hughes* v. *Edwards*, 489. 497
2. Where the mortgagee brings his bill of foreclosure, the mortgage will, after the same length of time, be presumed to have been discharged, unless circumstances can be shown to repel the presumption, as payment of interest, a promise to pay, an acknowledgment by the mortgagor that the mortgage is still subsisting, and the like. *Id.* 497, 498
3. A *bonæ fidei* purchaser under the mortgagor, with actual notice of the mortgage, or constructive notice by means of a registry, can only protect himself in equity by the lapse of time, under the same circumstances which would afford a protection to the mortgagor. *Id.* 499

See LOCAL LAW, 2, 3. 12, 13.

LOCAL LAW.

1. The act of Pennsylvania, of 1779, "for vesting the estates of the late proprietaries of Pennsylvania, in this Commonwealth," did not confiscate lands of the proprietaries which were within the lines of manors; nor were the same confiscated by the act of 1781, for establishing a land office. *Kirk v. Smith*, 241
2. The statute of limitations of Pennsylvania, of 1705, is inapplicable to an action of ejectment, brought to enforce the unpaid purchase money, for lands of the proprietaries within the manors, for which warrants had issued. *Id.* 286
3. Nor is the statute of limitations of 1785, a bar to such an action. *Id.* 293
4. The Vestry of the Episcopal Church of Alexandria, now known by the name of *Christ's Church*, is the regular Vestry, in succession, of the parish of Fairfax, and, in connexion with the Minister, has the care and management of all the temporalities of the parish within the scope of their authority. A sale by them of the Church lands, with the assent of the Minister, under the former decree of this Court, conveys a good title to the purchaser. *Mason v. Muncaster*, 445. 454
5. The parishioners have, individually, no right or title to the glebe lands; they are the property of the parish in its aggregate or corporate capacity, to be disposed of, for parochial purposes, by the Vestry, who are the legal agents and representatives of the parish. *Id.* 468
6. Under the reserve contained in the session act of Virginia, and under the acts of Congress of August 10th, 1790, ch. 67. [xl.] and of June 9th, 1794, ch. 238. [lxii.] the whole country *lying between the Sciota and Little Miami rivers*, was subjected to the military warrants, to satisfy which the reserve was made. *Doddridge v. Thompson*, 469
7. The territory lying between two rivers, is the whole country from their sources to their mouths; and if no branch of either of them has acquired the name, exclusive of another, the main branch, to its source, must be considered as the true river. *Id.* 473
8. The act of June 26th, 1812, ch. 432. [cix.] to ascertain the western boundary of the tract reserved for the military warrants, and which provisionally designate *Ludlow's line* as the western boundary, did not invalidate the title to land between that line and *Robert's line*, acquired under a Virginia military warrant, previous to the passage of that act. *Id.* 478
9. The land between Ludlow's and Robert's line was not withdrawn from the territory liable to be surveyed for military warrants, by any act of Congress passed before the act of June 26th, 1812, ch. 432. [cix.] *Id.* 480
10. The land law of Virginia, of 1779, makes a pre-emption warrant superior to a treasury warrant, whenever they interfere with each other, unless the holder of the pre-emption warrant has forfeited that superiority, by failing to enter his warrant with the surveyor of the county, within twelve months after the end of the session at which the land law was enacted; and on that period having expired, and being prolonged by successive acts, during which time there was one interval between the expiration of the law and the act of revival, the original right of the holder of the pre-emption warrant was preser-

ved, notwithstanding that interval, the entry of the holder of the treasury warrant not having been made during the same interval. *Stevens v. M'Cargo*, 502

11. A question, under the registry acts of Tennessee, whether a junior conveyance registered, should take precedence of a prior unregistered deed: *Held*, that the registry did not, under the circumstances, vest the title against the elder deed. *Love v. Simms*, 515
12. By the statute of limitations of Tennessee, of 1797, a possession of seven years is a protection, only when held under a grant, or under mesne conveyances which connect it with a grant. *Walker v. Turner*, 541
13. A Sheriff's deed, which is void for want of jurisdiction in the Court under whose judgment the sale took place, is not such a conveyance as that a possession under it will be protected by the statute of limitations. *Id.* 545
14. Secondary evidence of the contents of written instruments is not admissible, when the originals are within the control or custody of the party: and this rule of evidence is not dispensed with by the local statutes of Kentucky, which provide that no person shall be permitted to deny his signature, as maker or assignor of a note, in a suit against him, unless he will make an affidavit denying the execution or assignment. These statutes do not dispense with proof of the existence of the instrument, or of the right of the party to hold it by assignment. *Sebree v. Dorr*, 558
15. Under the following entry, "H. R. enters 2000 acres in Kentucky, by virtue of a warrant for military services performed by him in the last war, in *the fork of the first fork of Licking*, running up each fork for quantity;" it appeared in evidence, that at the first fork of Licking, the one fork was known and generally distinguished by the name of the south fork, and the other by the name of the main Licking, or the Blue Lick fork, and that some miles above this place the south fork again forked: *Held*, that the entry could not be satisfied with lands lying in the first fork. *Meredith v. Picket*, 573
16. In such a case, the entry could not be explained, and the survey supported, by oral testimony. The notoriety and names of places may be shown by such testimony, but the words of an entry are to be construed by the Court as any other written instrument. *Id.* 575
17. The acts of Assembly of North Carolina, passed between the years 1783 and 1789, invalidate all entries, surveys, and grants of land within the Indian territory, which now forms a part of the territory of the State of Tennessee. But they do not avoid entries commencing without the Indian boundary, and running into it, so far as respects that portion of the land situate without their territory. *Danforth v. Wear*, 673
18. The act of North Carolina, of 1784, authorizing the removing of warrants which had been located upon lands previously taken up, so as to place them upon vacant lands, did not repeal, by implication, the previously existing laws, which prohibited surveys of land within the Indian boundary. The lands to which such removals are made, must be lands previously subjected to entry and survey. *Id.* 678

See CONSTRUCTION OF STATUTE, 13, 14.

LEX LOCI.

P.

PAYMENT.

1. In general, the debtor has a right to make the appropriation of payments; if he omits it, the creditor may make it: but neither party has a right to make an appropriation after the controversy has arisen. *United States* v. *Kirkpatrick*, 720. 737
2. In cases of long and running accounts, where balances are adjusted, merely for the purpose of making rests, the law will apply payments to extinguish the debts, according to the priority of time. *Id.* 738

PLEADING.

1. In a declaration upon a promissory note, the omission of the place where it is payable is fatal. *Sebree* v. *Dorr*, 558. 561, 562
2. Where, by the local law and usage, payment of a promissory note is demandable on the *fourth* day of grace, in order to charge the endorser, the declaration against the endorser must lay the demand on the *fourth*, and not on the *third* day. *Renner* v. *Bank of Columbia*, 581. 594
3. *Quære*, Whether a declaration, in such a case, not averring the local usage, would be good upon demurrer? *Id.* 594
4. To admit secondary evidence of a lost note, it is not necessary that there should be a count in the declaration as upon a lost note. *Id.* 597

PRACTICE.

1. A *certiorari*, upon a suggestion of diminution in the record, may be made by the clerk, and need not be made by the Judge of the Court below. *Stewart* v. *Ingle*, 526
2. Under the Judiciary Act of 1789, ch. 20. s. 22. the security to be taken from the plaintiff in error, by the Judge signing a citation on a writ of error, must be sufficient to secure the whole amount of the judgment, and is not to be confined to such damages as the appellate Court may adjudge for the delay. *Catlett* v. *Brodie*, 553
3. In ejectment, an amendment, so as to enlarge the term laid in the declaration, will be permitted, in the discretion of the Court. *Walden* v. *Craig*, 576
4. But a writ of error will not lie, in a case where the Court below has denied a motion for this purpose. *Id.* 578
5. The discharge of the jury from giving a verdict in a capital case, without the consent of the prisoner, the jury being unable to agree, is not a bar to a subsequent trial for the same offence. *United States* v. *Perez*, 579
6. The Court is invested with the discretionary authority of discharging the jury from giving any verdict, in cases of this nature, whenever, in their opinion, there is a manifest necessity for such an act, or the ends of public justice would otherwise be defeated. *Id.* 580
7. Under the 10th section of the Patent Act of the 21st of February, 1793, ch. 11. upon granting a rule, by the Judge of the District Court, upon the patentee, to show cause why process should not issue to repeal the patent, the patent is not repealed, *de facto*, by making the rule absolute; but the process to be awarded is in the

nature of a *scire facias* at common law, to the patentee to show cause why the patent should not be repealed, with costs of suit; and upon the return of such process, duly served, the Judge is to proceed to try the cause, upon the pleadings filed by the parties, and the issue joined thereon. If the issue be an issue of fact, the trial thereof is to be by a jury; if an issue of law, by the Court, as in other cases. *Ex parte Wood and Brundage*, 603

8. In such a case, a record is to be made of the proceedings, antecedent to the rule to show cause why process should not issue to repeal the patent, and upon which the rule is founded. *Id.* 603

9. It is not necessary that a bill of exceptions should be formally drawn and signed before the trial is at an end. The exception may be taken at the trial, and noted by the Court, and may, afterwards, during the term, be reduced to form, and signed by the Judge. But, in such cases, it is signed *nunc pro tunc*, and purports, on its face, to be the same as if actually reduced to form, and signed during the trial. It would be a fatal error if it were to appear otherwise. *Walton* v. *United States*, 651

10. Where the writ of error is dismissed for want of jurisdiction, no costs are allowed. *M'Iver* v. *Wattles*, 650

11. It is unnecessary for an Attorney or Solicitor, who prosecutes a suit for the Bank of the United States, or other corporation, to produce a warrant of attorney under the corporate seal. *Osborn* v. *Bank of the United States*, 738

12. Whatever authority may be necessary for an Attorney or Solicitor to appear for a natural or artificial person, it is not a ground of reversal for error, in an appellate Court, that such authority does not appear on the face of the record. It is a formal defect, which is cured by the statute of jeofails, and the 32d section of the Judiciary Act of 1789, ch. 20. *Id.*

See ADMIRALTY.
CHANCERY, 13, 14, 15, 16, 17.
EVIDENCE.
PRIZE, 2.

PRIZE.

1. Case of capture by an armed vessel, fitted out in the ports of the United States, in breach of the neutrality acts. Claim by an alleged *bonæ fidei* purchaser in a foreign port rejected, and restitution decreed to the original owners. *The Fanny*, 658

2. A *bonæ fidei* purchaser, without notice, in such case, is entitled to be reimbursed the freight which he may have paid upon the captured goods; and the innocent neutral carrier of such goods, the same having been transhipped in a foreign port, is entitled to freight out of the goods. *Id.* 671

See ADMIRALTY, 37, 38, 39, 40.

S.

SURETY.

1. The contract of a surety is to be construed strictly, and is not to be extended beyond the fair scope of its terms. *Miller v. Stewart*, 680

2. Where a bond was given, conditioned for the faithful performance of the duties of the office of Deputy Collector of direct taxes for

eight certain townships, and the instrument of the appointment, referred to in the bond, was afterwards altered, so as to extend to another township, without the consent of the sureties: *Held*, that the surety was discharged from his responsibility for moneys subsequently collected by his principal. *Id.* 704

3. A bond, given on the 4th of December, 1813, for the faithful discharge of the duties of his office, by a Collector of direct taxes and internal duties, appointed (under the act of the 22d of July, 1813, c. 16.) by the President, on the 11th of November, 1813, to hold his office until the end of the next session of the Senate, and no longer, and subsequently appointed by the President, with the advice and consent of the Senate, on the 24th of January, 1814, is to be restricted (as to the liability of the sureties) to the duties and obligations created by the Collection Acts passed antecedent to the date of the bond. *United States v. Kirkpatrick*, 720. 730

4. The second commission, issued under the appointment, with the advice and consent of the Senate, operates a revocation of the first commission, issued under the appointment by the President, which was to continue until the end of the next session of the Senate, and no longer; and the liability of the sureties in the bond did not extend beyond the duration of the first commission. *Id.* 734

5. In general, laches is not imputable to the government; and where the laws require quarterly or other periodical accounts and settlements, a mere omission to bring a suit, upon the neglect of the officer or agent to account, will not discharge his sureties. *Id.* 735

6. The case of *The People v. Jansen*, (9 *Johns. Rep.* 332.) distinguished; and, so far as it conflicts with the present case, overruled. *Id.* 737

T.

TREATY.

See ALIEN.